

REMARKS

Applicants thank the Examiner for the detailed Office Action dated 8 August 2007. Applicants respectfully request reconsideration of the present application in view of the reasons that follow.

Claims 1-56 were pending in the application. Claims 11 and 13-20 are requested to be cancelled without prejudice or disclaimer. Claims 1, 21, 33, 35, are currently being amended. Claims 62-68 are being added. After amending the claims as set forth above, claims 1-10, 12, 21-56, and 62-68 are now pending in this application.

For simplicity and clarity purposes in responding to the Office Action, Applicants' remarks are primarily focused on the rejections applied to the independent claims (i.e., claims 1, 21, 35, and 42) as outlined in the Office Action with the understanding that the dependent claims are patentable for at least the same reasons (and in most cases other reasons) that the independent claims are patentable. Applicants expressly reserve the right to argue the patentability of the dependent claims separately in any future proceedings.

Interview Summary

On 26 September 2007, Applicants' representative, Scott C. Nielson, and Examiner Strange participated in a telephone interview. The pending claims were discussed in view of U.S. Patent No. 6,078,956 to Bryant et al. Applicants' representative and Examiner Strange discussed whether Bryant et al. showed the limitations recited in claim 11 and claim 21 regarding combining a performance metric with another metric to determine a correlated metric. Examiner

Strange indicated that Bryant et al. did not appear to disclose such a configuration, but reserved the right to further analyze the reference and the prior art.

Claim Rejections – 35 U.S.C. § 102

Independent Claims 1, 21, 35, and 42

On page 6 of the Office Action, independent claims 1, 21, 35, and 42 and various dependent claims were rejected under 35 U.S.C. § 102(e) as being unpatentable over U.S. Patent No. 6,078,956 to Bryant et al. Applicants respectfully traverse the rejection. Bryant et al. does not identically disclose the subject matter recited in any of independent claims 1, 21, 35, or 42, as amended.

Applicants have amended independent claims 1, 21, 35, and 42 to recite the limitations discussed in the telephone interview – i.e., to recite combining a performance metric determined at one site with another performance metric determined at another site to thereby determine a correlated performance metric. In the Office Action, the Examiner cited the top half of col. 5 of the Bryant et al. reference and asserted that it showed determining a correlated performance metric. However, as discussed in the interview, this passage of Bryant et al. is simply explaining the different time components that make up the total response time for an HTTP request. This passage of Bryant et al. only describes calculating the overall response time associated with a given HTTP request. Bryant et al., col. 7, lines 22-26. There is no description of combining a performance metric determined at one site with another performance metric determined at another site to determine a correlated performance metric.

Applicants respectfully submit that the dependent claims rejected under 35 U.S.C. § 103(a) are patentable for at least the same reasons that the independent claims are patentable.

For the above reasons, Applicants respectfully submit that independent claims 1, 21, 35, and 42 and the claims which are dependent thereon are not anticipated by the cited reference and are patentable.

New Claims

Applicants have added new claims 62-68. Of these claims, claim 62 is in independent format. Applicants submit that claim 62 and the claims which depend therefrom are allowable because claim 62 recites “combining the server performance metric with said at least one performance metric to determine the correlated performance metric,” which is not identically shown in Bryant et al. as explained above.

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Applicants respectfully submit that the present Application is in condition for allowance. Applicants request reconsideration and allowance of the pending claims. The Examiner is invited to contact the undersigned by telephone if the Examiner needs anything or if a telephone interview would advance the prosecution of the present application.

Applicants respectfully put the Patent Office and all others on notice that all arguments, representations, and/or amendments contained herein are only applicable to the present patent application and should not be considered when evaluating any other patent or patent application

including any patents or patent applications which claim priority to this patent application and/or any patents or patent applications to which priority is claimed by this patent application.

The Commissioner is hereby authorized to charge any additional fees which may be required for this application, or credit any overpayment, to Deposit Account No. 08-2623. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension and authorize payment of any such extension fees to Deposit Account No. 08-2623.

Respectfully submitted,

Date 9/27/07

By 

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